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HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.No.1065 of 2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

APPELLANT NON-APPLICANT No.2	:	The New India Assurance Co. Ltd., Rajnandgaon, through its Divisional Manager, Bilaspur Divisional office, Rajendra Nagar, Bilaspur (C.G.)
		VERSUS
APPLICANT RESPONDENT No.1	: A.	Smt. Taramati, Wd/o late Hiranand Verma, aged 25 years, Occupation-Housewife.
	: B.	Chirag, S/o Late Hiranand Verma, aged about 2 years, through Guardian Mother Smt. Taramati, Wd/o Late Hiranand Verma, aged 25 years, Occupation-Housewife.
	: C.	Kheduram, S/o Not Known, aged about 60 years (Father)
	: D.	Vimla Bai, W/o Kheduram, Aged about 55 years, Occupation-Housewife (All are resident of Village-Sonondha, P.O. Nevra Tilda, District-Raipur (C.G.)
RESPONDENT NO.2 NON-APPLICANT NO.1	: E.	Managing Director, Kaimal Solvent Extraction Pvt. Ltd., Somni, District-Rajnandgaon (CG)

Present:-
Shri N.K.Agrawal, Sr. Advocate with Qamrul Aziz, learned counsel for the appellant.
Shri Anoop Mazumdar, learned counsel for the respondent No.1.
Shri H.B.Agrawal, Sr. Advocate with Shri Pankaj Agrawal, learned counsel for the respondent No.2.

M.A.No.793/2005

APPELLANT NON-APPLICANT No.2	:	Managing Director, Kamal Sovent Extraction Private Limited, Somni, District-Rajnandgaon (Chhattisgarh)
		VERSUS
RESPONDENTS ACCUSED PERSON	: 1.	Smt. Taramati, Wd/o late Hiranand Verma, aged 25 years, Occupation-Housewife (Wife),
	: 2.	Chirag, S/o Hiranand Verma (Minor Son), aged about 2 years, Through natural Guardian mother Smt. Taramati Verma,
	: 3.	Kheduram, son of not Known, aged about 60 years (Father),

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: 4. Vimla Bai, W/o Kheduram, Aged about 55 years,
(All are resident of Village-Sonondha, P.O. Nevra Tilda, District-Raipur (C.G.)

CLAIMANTS

: 5. Branch Manager, the New India Insurance Company Limited, Branch-Rajnandgaon (Chhattisgarh).

NON-APPLICANT NO.2

Present :- Shri H.B.Agrawal, Sr. Advocate with Shri Pankaj Agrawal, learned counsel for the appellant.
Shri Anoop Mazumdar, learned counsel for the respondent No.1 to 4
Shri N.K.Agrawal, Sr. Advocate with Qamrul Aziz, learned counsel for the respondent No.5.

ORAL ORDER
(Passed on 31st July, 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

In these two appeals preferred by the Insurance Company and the employer, contentious factual issues, such as, whether the deceased sustained fatal injury in the accident arising out and in the course of his employment; whether the liability to pay compensation that could be fastened on the Insurance Company has to be restricted to sum of Rs.25,000/- only in terms of the policy; what is the liability of the employer etc., arise for decision-making. We do not have necessary evidence before us to record findings on these factual controversies that arise for decision in these appeals.

2. We have perused the written statement filed by the Insurance Company and also the pleading of the claimants. Though, during the course of arguments, it was contended by learned counsel for the claimants that when the accident took place, the deceased was travelling in a motor vehicle belonging to the employer given to him for official use,

to support that claim, we do not find required pleading in the application. Similarly, the pleading filed by the Insurance Company was also totally unsatisfactory. It did not claim that in terms of the policy, it is liable to pay compensation only to a extent of Rs.25,000/- and not more. In fact, admittedly, the entire policy was not produced before the Commissioner of Workmen's Compensation by the Insurance Company. In such state of affairs, we think that there is a likelihood of failure of justice, if we proceed to decide these appeals on merit. The proper course is to remand the proceedings to the Commissioner to conduct *denovo* inquiry and dispose of the claim, after giving opportunity to all the parties to file additional pleadings and documents and lead evidence. Accordingly, we allow these appeals, set aside the impugned award passed by the Commissioner of the Workmen's Compensation with a direction to dispose of the claim application *denovo.* We permit the parties to dispute to file additional/better pleadings and documents and they should do so within a period of 2 months from today. Thereafterwards, the Commissioner shall proceed to hear the claim applications, conduct inquiry and pass appropriate award in accordance with law. The Commissioner while doing so is directed to take into account the law laid down by the Apex Court in **General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes**[1], **Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another** [2], **STATE BANK OF INDIA Vs. SMT. VIJAY LAXMI wd/o SANTANMAN KRISHNAN MUDALIAR** [3] **& STATE OF M.P. and**

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1. A.I.R.-1964-S.C.-193 ; 2. A.I.R.-1997-SC-432 ; 3. 1998(1) M.P.L.J.-432

others Vs. **RAM LAKHAN LODHI and another**[4] and other relevant decisions to decide the question whether the accident had taken place in the course of and out of employment within the means of Sub-Section(1) of Section-3 of the Workmen's Compensation Act in order to fasten the liability on the employer or the insurer of the employer to pay compensation. Since, we have set aside the award and remanded the proceedings, we permit the Insurance Company to withdraw sum of money deposited by it before the Commissioner, Workmen's Compensation.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

4. 2001(1)M.P.L.J.-167